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IN THE

Supreme Court of the United States

October Term, 1962

SHENANDOAH VALLEY BROADCASTING, INC., *et al.*,
Appellants,

—against—

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION OF APPELLEE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS TO DISMISS THE APPEAL OR TO AFFIRM

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IN THE

Supreme Court of the United States

October Term, 1962

No. 502

SHENANDOAH VALLEY BROADCASTING, INC., *et al.*,

Appellants,

—against—

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION OF APPELLEE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS TO DISMISS THE APPEAL OR TO AFFIRM

Appellee, American Society of Composers, Authors and Publishers ("ASCAP" or the "Society"), moves pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States:

(1) to dismiss the appeal sought to be prosecuted by Shenandoah Valley Broadcasting, Inc., et al., from the judgment of the United States District Court for the Southern District of New York dismissing appellants' petition for music performing rights licenses, on the ground that the Expediting Act does not confer jurisdiction on this Court over this appeal, and, in the alternative,

(ii) to affirm, without further argument, the judgment of the District Court, on the ground that the Amended Final Judgment entered in 1950 in *United States v. ASCAP, et al.* (S.D.N.Y. Civ. No. 13-95) does not compel the Society to issue to appellants licenses of the type they are now seeking.

Questions Presented

The Society respectfully submits that only the following two questions are here genuinely raised:

1. When a consent judgment in an antitrust suit brought by the United States has created private rights for the benefit of numerous non-parties to the suit and has provided special rate-making proceedings in the District Court to implement such rights, must this Court, under the Expediting Act, entertain appeals by non-party applicants to review individual determinations made by the District Court in such incidental proceedings?

2. Does the Amended Final Judgment, which was entered in 1950 on the consent of the Society and the United States, empower the District Court, on motion of non-parties to the suit, to compel the Society to issue licenses of a type never before granted by it and nowhere prescribed in the provisions of that Judgment?

Statement

Before the organization of ASCAP, there was no effective method by which writers and publishers of music could secure payment for the use of their copyrighted musical works in public performances for profit. The users of music were so numerous and widespread, and each instance of use so fleeting, that no individual writer or publisher

could take the measures necessary to negotiate licenses with them or to detect unauthorized uses and secure legal redress. Conversely, music users who wished to perform thousands of works each year without risk of infringement had no practical means of obtaining licenses from the owners of all those works. As a means of solving the problems of both the copyright owners and the users of music, ASCAP was organized in 1914 as an unincorporated membership association representing both writers and publishers.

Today ASCAP has over 6,000 writer members and 2,000 publisher members, who grant to ASCAP non-exclusive rights to license the public performance of the copyrighted works that they have composed or published. Through the Society the works of its members are made available to over 30,000 enterprises located throughout the United States without the necessity of clearing each work separately. The Society's licensees include all the television and radio networks and over 500 commercial television stations and 4,000 radio stations. The television networks and almost all the television stations have elected to secure blanket licenses from the Society, enabling them to use all the works in the Society's repertory on any program they present without separately accounting for each use. These licenses obviate, for both the user and the copyright owner, the countless complex and expensive individual negotiations that would otherwise be required.

As set forth in the uncontroverted affidavit of Herman Finkelstein submitted in opposition to the order to show cause by which the proceedings below were commenced, the present type of blanket license held by appellants was painstakingly negotiated between the Society and the broad

casting industry in 1949 for the period 1949 through 1953 (A-6, R. 261).* That type of license was later renewed for the period 1954-1957, and again for the period 1958-1961 (A-7, A-8; R. 262).**

A substantial majority of the television stations (among whom are the petitioners, who operate 303 stations) and all the television networks in the United States have now collectively applied to ASCAP for licenses which are different from any prescribed in the Judgment and which would exclude from their coverage all programs pre recorded by others, production of which is commenced after February 28, 1962.

Under Section V of the Amended Final Judgment entered on March 14, 1950 in *United States* v. *ASCAP, et al.*, a manufacturer, producer or distributor of a transcription or recordation of a composition in ASCAP's repertory, which is recorded for performance on specified commercially sponsored radio or television programs, has the option of clearing through ASCAP the radio or television performing rights for the performance of such composition on stations enumerated by the license applicant, thereby eliminating the need for separate licenses for such performances by the enumerated stations (Appendix, p. 11a-13a; R. 33). If the Society were forced to grant to the television broadcasting industry licenses of the type ap-

* References to appellee's appendix attached to this motion are designated as "A- ;" references to appellants' appendix are designated as "Appendix, p. ;" references to the transmitted record are designated as "R. ."

** Of course, the District Court could take judicial notice of all prior proceedings in *United States* v. *ASCAP, et al.*, including the previous television rate proceeding brought therein in 1951, entitled *Matter of the Application of Voice of Alabama, Inc., et al.* *United States* v. *California Co-operative Canneries*, 279 U. S. 553, 555 (1929).

pellants now seek, the present option of independent program producers to "clear at the source" would be turned into a compulsion. Such producers inevitably would be compelled to pay for appellants' right to perform the music in pre-recorded programs.

Argument

This appeal should be dismissed or, in the alternative, the judgment of the District Court should be affirmed for the following reasons:

1. The Expediting Act does not confer jurisdiction on this Court to review determinations made in proceedings brought by non-parties to the suit solely under Section IX of the Amended Final Judgment.

2. The Amended Final Judgment does not compel the Society to grant appellants licenses of the novel type they are now seeking.

I.

The Expediting Act does not confer jurisdiction over this appeal.

Appellants were not parties to the action, *United States v. ASCAP, et al.*, in which the Amended Final Judgment was entered in 1950. Their standing in this proceeding is only as beneficiaries of that Judgment who were given certain privileges by its provisions. Among the privileges accorded to each appellant by that Judgment is the right to petition the District Court under Section IX for the determination of a reasonable fee to be paid to the Society for a performing rights license in the event that an applicant and the Society cannot agree upon a fee (Appendix, pp. 16a-18a; R. 36-38).

Appellants claim they are entitled to a direct appeal to this Court under the provisions of the Expediting Act* from a determination by the District Court that the Society cannot be compelled under the Amended Final Judgment to issue licenses of the type that appellants now seek.

The United States is the "complainant" in this proceeding only in the technical sense that it brought the original action in which the Amended Final Judgment was ultimately entered. The present proceeding was not brought by the United States to carry out or amend the provisions of that Judgment. Nor has the United States appealed from the order and judgment entered below.

The purpose of the Expediting Act is to expedite the final resolution of cases brought by the United States under certain statutes prohibiting conduct that threatens vital public interests. During consideration of the bill that became the Expediting Act, this objection was made clear by Senator Fairbanks, who explained the purpose of the bill on the Senate Floor when he reported it out of the Committee on the Judiciary:

> "The far-reaching importance of the cases arising under anti-trust laws now upon statute books or hereafter to be enacted, and the general public interest therein, are such that every reasonable means should be provided for speeding the litigation. It is the purpose of the bill to expedite litigation of great and general importance. It has no other object." 36 Cong. Rec. (Part II) 1670 (1903).

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* Section 2 of the Expediting Act provides:

> "In every court action brought in any district court of the United States under [the antitrust laws], wherein the United States is complainant, an appeal from the final judgment of the district court will lie only to the Supreme Court." 32 Stat. 823 (1903), as amended, 15 U.S.C. §29 (1952).

If this appeal can be taken under the Expediting Act, ASCAP and any and all of its more than 30,000 licensees can appeal directly to this Court from any determination of a license fee or a form of license made by the District Court under the Amended Final Judgment. Review of any such determination would inevitably require detailed consideration of massive amounts of technical data pertaining to, for example, the amount, type and identity of music used by the licensee and its importance in the licensee's operations. The Expediting Act does not contemplate that the energies of this Court be expended on matters of such great technical complexity and of such limited public interest.

In support of their assertion that this Court has jurisdiction over this appeal, appellants rely on *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U. S. 502 (1941); *Hughes* v. *United States*, 342 U. S. 353 (1952); *United States* v. *California Cooperative Canneries*, 279 U. S. 553 (1929); and *Sam Fox Publishing Co.* v. *United States*, 366 U. S. 683 (1961). With the exception of *Hughes* v. *United States*, *supra*, these cases all involved an order denying a motion to intervene in a Government antitrust suit where the appealing party claimed intervention as a matter of right.

An order denying intervention to one entitled as a matter of right to intervene in a Government antitrust suit is wholly different from a license fee determination made by the District Court under the Amended Final Judgment. The granting of intervention in a Government antitrust suit makes the intervenor a party to the action itself, enabling him to present his views as to the merits of the claims and defenses or, if the action was or is to be resolved by consent, the form and adequacy of the relief to

be embodied in the judgment. In contrast, the only right accorded to appellants and other ASCAP licensees under Section IX of the Amended Final Judgment is a judicial determination of a reasonable license fee. The exercise of that limited right does not involve the considerations of great public interest for which the Expediting Act was intended.

Appellants' reliance on *Hughes* v. *United States*, 342 U. S. 353 (1952), is wholly misplaced, since that direct appeal to this Court was taken by the defendant and it challenged a construction of an antitrust decree that resulted from a motion made by the Government, not by a third party.

II.

The judgment of the District Court should be affirmed.

If this Court does not dismiss this appeal, it should affirm, without further argument, the judgment of the District Court dismissing appellants' petition.

This appeal does not raise a substantial question warranting further consideration by this Court. It represents only an attempt by certain ASCAP licensees, who were not parties to *United States* v. *ASCAP, et al.*, to impose new obligations on ASCAP that are nowhere prescribed or contemplated by the Amended Final Judgment.

The Amended Final Judgment does not require ASCAP to offer licenses of the type now demanded by appellants. The District Court properly rejected the attempt by appellants—ASCAP licensees who were not parties to *United States* v. *ASCAP, et al.*—to seek, in the guise of a fee determination, modification of the Judgment so as to impose new obligations on ASCAP.

As the District Court properly observed in its opinion of September 14, 1962:

> "Petitioners were not parties to the [Amended Final] judgment; they have petitioned only as beneficiaries under it and they may not under cover of the protection from discrimination afforded them under its provisions indirectly effect an amendment to that judgment so as to wrest from ASCAP a type of license it is now under no judicial compulsion to grant. Here we do not have a petition for modification of the consent judgment filed by a party to the judgment". (Appendix, p. 6a; R. 1354).

The Judgment imposes both restraints and obligations on ASCAP with respect to the licensing of its repertory. Some of the provisions prohibit certain types of conduct; other provisions contain affirmative directions to ASCAP. No provision, however, compels ASCAP to issue licenses of the type appellants are now seeking (for a detailed discussion of the licensing provisions of the Judgment, see *infra* at 12-18).

Appellee submits that the real objective of the appellants is to persuade this Court, in a proceeding brought solely under Section IX of the Amended Final Judgment, to modify and amend that Judgment so as to impose on ASCAP an entirely new obligation. But appellants are no more entitled to bring about a modification of the Judgment in this proceeding than are individual ASCAP members, who have been held not entitled to intervene in proceedings to amend the Judgment. *Sam Fox Publishing Co. v. United States*, 366 U. S. 683 (1961). The Judgment itself provides that only the United States and ASCAP may apply to the Court for the modification thereof (Appendix,

pp. 22a-23a; R. 41). *Cf. United States v. Radio Corporation of America*, 180 F. Supp. 770 (E.D. Pa. 1960), *appeal dismissed sub nom. Westinghouse Broadcasting Co. v. United States*, 364 U. S. 518 (1960); *United States v. Loew's Inc.*, 130 F. Supp. 13 (S.D.N.Y. 1955).

Appellants' objective is made clear by their repeated reliance on the 139-page offer of proof set forth in their appendix (Appendix, pp. 37a-175a; R. 953-1019; appellee also submitted, conditionally, its offer of proof, R. 1020-1306). This offer of proof, which was properly excluded by the District Court, contains lengthy allegations that are wholly apart from the language of the Judgment, which provides the only basis for this proceeding and which defines the rights of the appellants and the duties of the appellee.

When a decree is entered on the consent of the parties without trial or adjudication of any issue of fact or law, courts will not go outside the language of the decree in a sweeping search for some alleged underlying purpose of the suit in order to carry out the decree in a manner that might effectuate that claimed purpose. No issues have been adjudicated, and the decree is not ancillary to findings whose purpose is to be effectuated. The language of the decree is itself controlling and the only restraints and obligations imposed upon a defendant are those set forth in the decree.

Thus, in *Hughes v. United States*, 342 U. S. 353 (1952), involving a consent decree that provided specific treatment for Howard Hughes' stockholdings in two new companies to be formed from R.K.O., this Court said:

> "It may be true as the Government now contends that Hughes' large block of ownership in both types of companies endangers the independence of each. Evidence might show that a sale by Hughes is indispens-

able if competition is to be preserved. However, in section V the parties and the District Court provided their own detailed plan to neutralize the evils from such ownership. Whatever justification there may be now or hereafter for new terms that require a sale of Hughes' stock, we think there is no fair support for reading that requirement into the language of section V. The District Court's order cannot be supported by reliance on such an interpretation. Consequently the court's command to sell the stock effected a substantial modification of the original decree." 342 U. S. at 357.

In *United States* v. *Atlantic Refining Co.*, 360 U. S. 19 (1959), as in *Hughes*, the Government asked the Court to interpret a consent decree in a manner which, arguably, would have effectuated the underlying purpose of the action, but which was not supported by the language of the decree. This Court rejected this interpretation, stating:

> "The Government contends that the interpretation it now offers would more nearly effectuate 'the basic purpose of the Elkins and Interstate Commerce Acts that carriers are to treat all shippers alike.' This may be true. But it does not warrant our substantially changing the terms of a decree to which the parties consented without any adjudication of the issues [footnote omitted]. And we agree with the District Court that accepting the Government's present interpretation would do just that." 360 U. S. at 23.

Appellants seek to rely on *Swift & Co.* v. *United States*, 276 U. S. 311 (1928), but that decision provides no support for their contentions since it stated, in relevant part, only that the provisions of the consent decree there in issue were "to be read in connection with other paragraphs of the decree and with the allegations of the bill." *Id.* at 328. Here appellants can point to no provision in the Amended

final judgment, or even to any allegation in the 1941 complaint, that supports their asserted reading of the judgment.

Appellants' attempts to invoke "block booking" decisions such as *United States v. Paramount Pictures, Inc.*, 334 U. S. 131 (1948), and *United States v. Loew's, Inc.*, 31 U.S.L. Week 4001 (U. S. Nov. 5, 1962), are equally futile. In complete contrast to the "block booking" victims in those cases, music users who desire a license for one or more specified compositions in the ASCAP repertory may negotiate for them directly with the individual members of ASCAP. In fact, ASCAP is barred under Section VI from issuing licenses for individual copyrights except in the very limited circumstances there described (Appendix, p. 14a; R. 35).

Moreover, appellants themselves now seek licenses to perform *all* of the compositions in the ASCAP repertory. Thus there is no merit whatsoever to appellants' claim that their present ASCAP licenses violate Section IV(B) of the Judgment by limiting or restricting the rights of ASCAP members to license their works individually.

A. The Amended Final Judgment does not require ASCAP to issue the licenses sought by appellants.

A reading of the Amended Final Judgment shows plainly what its scheme is: ASCAP is required to offer licenses for its entire repertory to all commercial classes of music users. ASCAP is required to grant certain types of licenses to certain particular classes of users. ASCAP is prohibited from granting other types of licenses to certain particular classes of users. If ASCAP elects to offer a particular type of license to one member of a user class, it is pro-

inhibited from granting the same type of license to another member of the same class; similarly, should ASCAP may offer to a class of users more than one type of license. If ASCAP offers the same class of user two or more types of licenses, it must use its best efforts to offer rates that would not deprive an applicant of a genuine economic choice among the types offered.

ASCAP is *not* required to issue hundreds, or not thousands, of different types of licenses, each differing in its terms depending on the particular demands of each licensee. ASCAP is *not* required to propose a license whatever license terms each individual applicant may see fit to request.

The provisions of the judgment relating to the licensing of the ASCAP repertory are simple in structure.

• Provisions for Compulsory Licensing

Section VI requires ASCAP to license its repertory to all users (Appendix, p. 14a; R. 41).

Sections V and VII(B) enumerate certain types of licenses that ASCAP is required to grant to certain types of users.

> Section V requires ASCAP to grant licenses at the source, under certain clearly stated conditions, at the request of (1) radio and television networks, (2) wired music services, (3) manufacturers, producers or distributors of transcriptions or recordations intended for radio and television broadcasting, and (4) motion picture producers (Appendix, pp. 11a-14a; R. 33-34).

Thus Section V provides an *option* for program producers to acquire television performing rights from ASCAP. The licenses sought by appellants would be clearly inconsistent with this provision because their inevitable effect would be to turn this option into a compulsion by forcing producers to obtain television performing rights.

Section VII(B) requires ASCAP, at the request of a radio or television station, to grant "per program" licenses in which the fee is based on the station's revenues or card rates for "*each*" program containing ASCAP music, whether or not the program consists of pre-recorded materials (Appendix, pp. 15a-16a; R. 35-36).

None of the types of licenses enumerated in Sections V and VII(B) is the type that the appellants are now requesting.

Provisions Prohibiting Discrimination

Sections IV(C) and VIII prohibit discrimination.

Section IV(C) prohibits ASCAP, in offering licenses that the Judgment requires it to offer or that it may elect to offer, from discriminating in "license fees or other terms and conditions between licensees similarly situated" (Appendix, p. 10a; R. 31).

Section VIII directs ASCAP in fixing fees for the various types of licenses that the Judgment requires it to offer or that it may elect to offer, "to use its best efforts to avoid any discrimination among the respective fees fixed for the various types of licenses which would deprive the licensees or prospective licensees of

a genuine choice from among such various types of licenses" (Appendix, p. 10a; R. 30).

Sigmund Timberg, who represented the Government in negotiating the Amended Final Judgment, observed with respect to Section VIII:

> "Fifth, Section VIII of the Amended Consent Judgment in effect requires ASCAP to use its best efforts to give licensees a genuine choice from among various types of licenses *offered by it.*" (Emphasis added.) Timberg, *The Antitrust Aspects of Merchandising Modern Music: The ASCAP Consent Judgment of 1950*, 19 Law & Contemp. Prob. 294, 310 (1954).

Nowhere did Mr. Timberg suggest that Section VIII imposes a duty on the Society to offer any particular type of license, much less a duty to accept whatever terms and arrangements might be devised and requested by a license applicant.

Provisions Restricting Licensing Terms

Sections IV and VII(A) contain certain restrictions on the terms ASCAP may include in its licenses. Some of these restrictions apply to all licenses; others apply only to licenses to particular classes of users.

Section IV(D) prohibits ASCAP from granting any license of more than five years' duration, except for motion picture performance rights licensed at the source pursuant to Section VI(C) (Appendix, p. 10a; R. 31-32).

Section IV(E) prohibits ASCAP from licensing motion picture performance rights to any motion picture theatre exhibitor (Appendix, p. 10a; R. 32).

Section VII(A) prohibits ASCAP from issuing any license to a radio or television broadcaster in which the fee, in the case of commercial programs, is based upon a percentage of the income received by the licensee from programs which include no ASCAP compositions, unless the radio or television broadcaster to whom the license shall be issued desires such a license (Appendix, p. 15a; R. 35). Section VII(B)(3) makes it clear that such a license is the "blanket license" referred to by the Judgment (Appendix, p. 16a; R. 36).

Appellants do not contend that the licenses offered by ASCAP violate any of these restrictions.

Provisions for Fixing Fees

Section IX provides for the case where ASCAP and an applicant cannot agree on the fee for one of the types of licenses which the Judgment requires ASCAP to offer or which ASCAP may have elected to offer. This section provides that, upon application, ASCAP shall quote a fee "for the license requested" and that, if the parties are unable to agree, the applicant may apply to the court to fix the fee (Appendix, pp. 16a-18a; R. 36-38).

> The phrase "the license requested" means the license for the type of use of the Society's repertory that the applicant intends to make, not the particular and varying contract terms that each of the Society's more than 30,000 licensees might see fit to request. Thus a license may be requested for the use of "wired music", or for music in a hotel, or for roller skating rinks, taverns or concert halls—or for radio or television broadcasting.

The "license requested" also refers back to the phrase "any, some or all of the compositions in the ASCAP repertory", which appears earlier in the sentence. Under Section VI, an applicant can apply to ASCAP for a license to perform "all of the compositions in the ASCAP repertory" or, in certain circumstances, for a license to perform "one or more specified compositions in the ASCAP repertory" (Appendix, p. 14a; R. 35).

Appellants argue, however, that they are seeking either a "blanket license" or a "per program license" within the meaning of the Judgment and that ASCAP is obligated under Section VII of the Judgment to issue the type of license they request.

There are several fatal defects in this argument. Section VII(A) states merely that ASCAP is enjoined from issuing blanket licenses "unless the radio broadcaster or telecaster to whom such license shall be issued shall desire [such] a license . . ." (Appendix, p. 15a; R. 35).

When the Judgment wanted to command ASCAP to issue a particular type of license, it knew how to do so, as illustrated by Section VII(B). In Section VII(B), ASCAP is *"ordered and directed"* to issue "to any unlicensed radio or television broadcaster . . . per program licenses . . ." (Appendix, p. 15a; R. 35). (Emphasis added.) The "per program license" that ASCAP must issue under this provision is a license requiring payment for *"each"* program in which ASCAP compositions are performed, whether or not the program is made up of pre recorded materials.

The words "ordered and directed" do not appear anywhere in Section VII(A). However, even if Section VII(A) could be construed to require that ASCAP issue blanket licenses to telecasters who desire them, it does not refer to licenses of the type appellants now seek. Section VII(A) refers to licenses for which the fee is based on revenues from all programs, including those that do not contain compositions within the ASCAP repertory. The blanket license now held by each appellant bases its fee on all locally-emanating programs (as distinguished from network-emanating programs, which are cleared at the source pursuant to Section V(A)), whether or not they contain ASCAP music and whether or not they are "live" or pre-recorded.

Thus the existing blanket and per program licenses are precisely the types of licenses referred to in Section VII, as Mr. Timberg recognized:

> "The 1941 ASCAP Decree was, as far as ASCAP's relations with music users were concerned, largely confined to stating, in legal injunctive language, some of the ground rules which were to govern the prices and other terms and conditions under which radio stations were to be licensed to use ASCAP music. The standard 'blanket' and 'per program' licenses, and the schedule of payments originally negotiated between ASCAP and the radio industry on the basis of their 1941 concordat, were still accepted by both sides in 1950. Hence, with the exceptions noted in this section, the radio broadcasting provisions of the old decree were carried over substantially unchanged into the new." Timberg, *supra*, at 307.

Nothing in Section VII, even if it can be read to require ASCAP to grant blanket licenses to appellants,

commands that such licenses be of the type appellants now request—*i.e.*, covering only some of the locally emanating programs that contain ASCAP music and excluding other locally emanating programs that contain ASCAP music even though licenses for those other programs have not been issued by ASCAP under Section V(B) to the producers thereof.

B. The provisions of the Amended Final Judgment occasioned by the *Alden-Rochelle* decision apply only to theatre exhibition of motion pictures.

In support of their construction of Sections VI and IX, appellants claim that the conclusions reached in *Alden-Rochelle, Inc.* v. *ASCAP*, 80 F. Supp. 888, *modified*, 80 F. Supp. 900 (S.D.N.Y. 1948), which were before the District Court when it entered the Amended Final Judgment in 1950, are equally applicable to the licensing of pre-recorded material for broadcast by television stations. Appellants, under the guise of seeking construction of the Judgment, argue that the solution adopted by the Judgment for the licensing of motion picture performance rights for exhibition in theatres should now be applied to the telecasting of pre-recorded materials.

The judgment entered in the *Alden-Rochelle* action was vacated on March 14, 1950, at the time of the entry of the Amended Final Judgment, which completely superseded the *Alden-Rochelle* judgment. Specific language was set forth in the Amended Final Judgment to take account of the practices at issue in *Alden-Rochelle*.

Thus, for example, under Section V(C) ASCAP is required to issue, upon request, "to any person engaged in producing motion pictures . . . a single license of motion

picture performance rights covering the United States, its territories and possessions, without requiring further licenses" (Appendix, p. 13a; R. 33).

Section IV(B) of the Judgment prohibits ASCAP from granting licenses for motion picture performance rights to "any motion picture theatre exhibitor" (Appendix, p. 10a; R. 32). Significantly, this section makes no mention of any prohibition against licensing television stations to telecast films or other pre-recorded material.

It is clear from the *Alden-Rochelle* opinion, underlying this language of the Amended Final Judgment, that the motion picture performance right referred to in the Judgment consisted of the right to perform musical works in motion picture theatres, and did not relate to the completely different medium of public communication and entertainment represented by the telecasting of pre-recorded program materials.

The term "motion picture performance right", as defined in Section II(C) of the Amended Final Judgment, was limited to the "exhibition" of motion pictures in motion picture theatres, as the specific mention of motion picture theatres in other parts of the Judgment clearly shows. Thus, although television was well established in 1950, and although the Judgment expressly took account of this medium (see, *e.g.*, Sections VII and V(B)); nothing in the Judgment prevents ASCAP from licensing to telecasters the performing rights for works that are pre-recorded in motion pictures, television film series or other program materials. Appellants have concurred in this construction of the Judgment for a dozen years by demanding, receiving, and paying ASCAP for the right to telecast the music contained in such pre-recorded materials.

CONCLUSION

The Court should grant the motion of appellee, American Society of Composers, Authors and Publishers, to dismiss the within appeal or, to affirm the judgment of the District Court without further argument.

Respectfully submitted,

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APPENDIX

Affidavit of Herman Finkelstein

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 13-95

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

Defendant.

In the Matter of the Application of

SHENANDOAH VALLEY BROADCASTING, INC., et al.

Petitioners,

For the Determination of Reasonable License Fees.

HERMAN FINKELSTEIN, being duly sworn, deposes and says:

1. I am General Attorney of the American Society of Composers, Authors and Publishers and make this affidavit in opposition to the proposed order described in the Court's Order to Show Cause served on December 19, 1961 and in support of Respondent Society's proposed Interim Fee Order.

Affidavit of Herman Finkelstein

2. This affidavit will set forth facts showing (a) the Society's practice since 1945 of soliciting television performing rights from its members on a conditional basis and for limited periods of time; (b) the recent negotiations between the Society and the Petitioners; and (c) that the receipt of further authorizations from members to license television rights and the deposit of all such authorizations with the Society on an unconditional basis have rendered moot the relief sought by Petitioners' Order to Show Cause.

History of the Society's Solicitation of Television Rights from Members

3. At the Hearing this morning counsel for Petitioners stated that the Society had solicited television rights from its members on a conditional basis in order to be in a position to frustrate their rights under Section IX of the Amended Final Judgment.

The facts are to the contrary. The practice of which Petitioners complain originated in 1945, five years before the entry of the Amended Final Judgment. The reasons for the practice are summarized below.

4. In 1941, as part of a settlement of a dispute between the Society and the broadcasting industry, the Society granted a gratuitous license for television, to the extent, if any, that it then had television rights from its members. The extent to which it had such rights was not clear at that time.

5. In 1945, when the television industry was about to embark on a new phase in its development, the Society's Board of Directors adopted a resolution directing the Society's management to send a separate form of agreement to members granting television rights to the Society. That resolution provided that the Society's management was to

> "hold in escrow all such agreements signed by members of the Society until the writer members who have signed and delivered such agreements and the publisher members who have signed and delivered such agreements represented eighty percent (80%) of the total amount of the Society's distribution of domestic royalties for the calendar year 1944 to writer members and publisher members, respectively, at which time such agreements shall become in full force and effect as to all members who shall have signed and delivered the same."

A copy of a letter dated December 12, 1945 from the Society to the members, referring to the fact that the agreement would not become effective until 80% of the members signed it, is annexed hereto as EXHIBIT "A".

The agreements were sent to the members in anticipation of negotiations with the television broadcasters for license agreements to replace the existing gratuitous licenses. These negotiations did not materialize and the gratuitous license continued in effect until December 31, 1948.

The reasons for obtaining these separate authorizations from members relating to television rights, and for limiting the grants of such rights to a term much shorter than

that applicable to other rights, were and are rooted in the distinctions between the nondramatic performing right and the dramatic rights under the copyright laws, and in the economics of the entertainment industry. The type of use that may be made of the members' works on television under the nondramatic performing right is very closely akin to the dramatic rights which the members reserve for individual licensing. For this reason, the extent to which the collective licensing of the nondramatic performing rights by ASCAP may impinge upon and restrict the dramatic rights reserved by the members for individual licensing is one that the members feel they should be able to supervise more closely and review more frequently than the exercise of other rights entrusted to the Society.

6. On December 1, 1948, the Society notified all of its television licensees that, in view of the fact that the television industry had passed from the experimental to the commercial stage of its development, the gratuitous licenses would be terminated effective December 31, 1948. Recognizing that it might take some time to work out a license agreement, the Society proposed that if no agreement were reached by January 1, 1949, it would continue to authorize performances of its works for a 60 day period with the understanding that any agreement reached within 60 days after January 1, 1949 would be retroactive to that date. If no agreement was reached within the 60 day period the Society agreed to waive its right to collect for performances on television during that period, which would be regarded as having been authorized under a gratuitous license.

Affidavit of Herman Finkelstein

At this time, there were wide differences of opinion among the membership as to the scope and duration of the rights that should be granted to the Society. Accordingly, the Board determined to solicit rights for a period of only two years, and also to exercise the rights only if a sufficient number of members granted rights to make licensing through ASCAP feasible. For this purpose the Board advised members that individual grants of rights would only be effective if members representing at least 80% of the Society's revenues were willing to give such authorizations.

In anticipation of the forthcoming negotiations with the television industry, the Society, on October 8, 1948, sent to all members a form of television agreement for the period ending December 31, 1950. That agreement was sent pursuant to a resolution of the Society's Board of Directors that

> "... [T]he president hold in escrow all such agreements signed by members of the Society until the writer members who have signed and delivered such agreements and the publisher members who have signed and delivered such agreements represent eighty percent (80%) of the total amount of the Society's distribution of domestic royalties during the calendar year 1947 to writer members and publisher members respectively, at which time such agreements shall become in full force and effect as to all members who shall have signed and delivered the same."

A copy of the letter forwarding the agreement to the members, which sets forth the above resolution, is annexed hereto as EXHIBIT "B".

This agreement provided for an assignment of performing rights limited to instrumentalists or to a group of vocalists not exceeding five and, in general, to performances without costume or scenery.

7. During 1949, the Society negotiated with the television broadcasters and the 60-day period referred to above was extended from time to time. During these negotiations, the broadcasters advised the Society that the grant of rights which it had obtained from its members was too narrow. They were not interested in obtaining a license on the basis proposed by the Society.

8. In October 1949, the Society and representatives of the television networks agreed upon a form of license agreement for television networks. The grant of rights provided for in that agreement was considerably broader than the grant which the Society then had from its members. It was, therefore, necessary for the Society to obtain a new grant from its members.

The television networks and the Society entered into an escrow agreement dated October 17, 1949 which provided for payment of 25% of the license fees in escrow and that the license would not become effective until the Society received television agreements from 85% of its publisher members (including all members of the Board of Directors) and 80% of the writer members, and an aggregate of 85% of all members. The Society was also required to deliver a letter granting an assignment of kinescope recording rights from the publisher members who had granted the television performing rights to the Society.

The escrow agreement provided that the monies deposited in escrow be paid to the Society when the license agreements became effective, but that if the Society did not have the required assignments from its members by December 31, 1949, either the Society or the television network had the right to terminate the escrow agreement on thirty days' notice to the other party, in which event the monies deposited in escrow were to be returned to the television network together with copies of the license agreements marked "Null and Void". A copy of the form of Network Effective Date Letter dated October 17, 1949 setting forth the escrow agreement is annexed hereto as EXHIBIT "C".

9. The practice of depositing television assignments with the Society in escrow, which was instituted in 1945 and repeated in 1948, was continued for each successive assignment of television performing rights. Thus, on May 1, 1953, forms of extension agreement were sent to the Society's members covering the period expiring December 31, 1957. These agreements were submitted to the Society's members pursuant to a resolution of the Society's Board of Directors providing that the agreements would be held in escrow until they had been executed by 80% of the members (in terms of royalties).

A copy of the letter forwarding the agreement to the members, which sets forth the resolution, is annexed hereto as EXHIBIT "D".

10. On November 1, 1956, the Society's members were asked to extend the prior television agreements with the

Society for the period expiring December 31, 1961. The forms of extension agreement were sent to the members pursuant to a resolution of the Society's Board of Directors providing for the same escrow arrangement.

A copy of the letter forwarding the agreement to the members, which sets forth the resolution, is annexed hereto as EXHIBIT "E".

11. The Society's letter of August 4, 1961, which the Petitioners claim is designed to frustrate their rights under Section 9 of the Amended Final Judgment, is thus in all respects the same as the prior letters forwarding television agreements to the members (e.g., Exhibits "D" and "E"). A copy of that letter is annexed hereto as EXHIBIT "F".

THE SOCIETY'S RECENT NEGOTIATIONS WITH PETITIONERS

12. As indicated above, the Society sent to its members on August 4, 1961 an extension of the existing television agreements. The usual practice was followed, namely, that the members were advised that their agreements would be held in escrow until 80% of the writer and publisher members, on a revenue basis, had deposited their agreements. At that time, the Society had no knowledge of the fact that Petitioners intended to demand a license on a completely new basis.

It was not until October 18, 1961 that Petitioners wrote a letter to the Society presenting their demands. This letter requested a "blanket" license limited only to the relatively

small number of programs which each station originates locally, and excluding programs originally filmed or taped by third party producers. As to such filmed or taped programs produced after February 28, 1962, the letter proposed that ASCAP itself assert no right to license, and that ASCAP's members should individually license the performance of their works in such programs directly to the producers concerned.

13. In subsequent meetings the ASCAP representatives stated that this proposal would cause serious economic injury to ASCAP's members and was not an acceptable basis for negotiations. They explained that it would not be in the best interests of ASCAP's individual members to grant television rights to ASCAP under circumstances where ASCAP might be required to license all of their works for a few local television programs, while they themselves would be required to license some of the same works directly to film and tape producers of the great majority of local television programs. They pointed out that if members are to be required to license their works individually for some television purposes, it would be in their interest to do so for all television purposes, rather than to divide the licensing responsibility between themselves and ASCAP.

Furthermore, the ASCAP representatives pointed out that in licensing their works individually to producers of filmed and taped shows, ASCAP's members would be at a hopeless disadvantage in competing against Broadcast Music, Inc. collectively owned and controlled by the broadcasters; that BMI has amassed rights to a large quantity

of music suitable for such purposes by offering large financial inducements to selected writers and publishers; that BMI would remain free to license collectively the works it has amassed, and, that BMI, instead of collecting fees *from* producers for using its works, as ASCAP members would have to do, would be able to continue its present policy of offering substantial long term guaranteed payments *to* producers who agree to use BMI music exclusively or in specified percentages in their shows.

RECEIPT OF FURTHER AUTHORIZATION MAKES THE RELIEF REQUESTED IN THE ORDER TO SHOW CAUSE UNNECESSARY

14. Throughout the four-year duration of the present license, Petitioners well knew that ASCAP's grants of television rights from its members would expire on December 31, 1961. I am informed and believe that Petitioners' Committee has been in existence for over a year. Yet Petitioners chose not to make their request for the radically different partial license for only a small portion of their local programs until October 18, 1961, only ten weeks before the end of the present license term.

15. As a result of Petitioners' unexpected demand for a license covering only a small portion of their local programs, a number of ASCAP members delayed the execution of their authorizations of television rights for the 1962-1966 period, because of their unwillingness to permit ASCAP to agree to license their catalogues on this basis. However, now that Petitioners have placed the issue of

their right to obtain such a license under the Amended Final Judgment before this Court for adjudication, the Board of Directors of ASCAP has made a further request to all members that they deliver their 1962-1966 authorizations to ASCAP so that ASCAP will be able to have this issue definitively resolved by the Court in such a way as to bind all parties. Authorizations from members representing more than 80% of the Society's publisher and writer revenues have now been received, including the authorizations of all members of the Board of Directors.

HERMAN FINKELSTEIN

Sworn to before me this
21st day of December, 1961.

HENRY HOROWITZ
Notary Public, State of New York
No. 03-0934300
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1962

Exhibit "A" Annexed to Affidavit of Herman Finkelstein

COlumbus 5-7464

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
THIRTY ROCKEFELLER PLAZA
NEW YORK 20, N. Y.

[Emblem]

December 12, 1945
Number 4310

TO ALL MEMBERS:

Re: TELEVISION AGREEMENT

On October 1, 1945, we enclosed in Circular Letter No. 4271 a proposed amendment to your membership to include television.

Some of the members of the Society felt that the proposed amendment as drawn might modify rights as between writers and publishers independently of the provisions of this amendment, and independently of the grant made by writers and publishers to the Society.

In order not to prejudice the rights of either writers or publishers as between themselves, and to be certain that such rights are not affected in any way, the following modification in the proposed amendment was approved by the Board of Directors on November 27, 1945:

> "Nothing herein contained shall affect or modify any rights as between writers and publishers under existing agreements. At the expiration of the term

of this agreement, namely, December 31, 1948, this agreement shall be cancelled as of said date with the same force and effect as if this agreement had not been executed. No reference to this agreement shall be made in support of or against any interpretation of existing contracts between writers and publishers in respect of any specific composition."

It is believed that this modification will result in receiving the consents of a number of members who have withheld sending in their agreements, pending a clarification of this matter.

We are happy to report that, up to the present time, the amendments signed by writers represent 67.95 per cent (67.95%) of the total amount of the Society's distribution of domestic royalties during the calendar year 1944 to writer-members, and that the amendments signed by publisher-members to date represent 60.08 per cent (60.08%) of such distribution to publisher-members during that year.

When the total number of consents of writers and publishers each aggregates eighty per cent (80%) in each respective group, the television amendment will be declared in effect.

If you have not sent in your amendment, please do so at once.

The modification quoted above will be deemed a part of the television amendment signed by all members, whether their amendment was signed and sent in to the Society heretofore or shall be signed and sent in to the Society hereafter.

Exhibit "A" Annexed to Affidavit of Herman Finkelstein

Again, I wish to urge you to send your amendment in at once if you have not already done so.

Cordially yours,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

DEEMS TAYLOR
President

Exhibit "B" Annexed to Affidavit of Herman Finkelstein

PLaza 7-2700

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS
THIRTY ROCKEFELLER PLAZA
NEW YORK 20, N. Y.
[Emblem]

#4772
October 8th, 1948.

TO ALL MEMBERS:

Enclosed please find two copies of the new television agreement with the Society, terminating December 31st, 1950.

This replaces the present agreement which expires December 31st of this year. It was unanimously approved and signed by the following members of our board of directors who were present at a special meeting called for that purpose:

Writers	*Publishers* (Signing for themselves, their subsidiaries and affiliates)
Stanley Adams	
Fred E. Ahlert	
Gene Buck	Louis Bernstein
Paul Cunningham	Irving Caesar
Oscar Hammerstein II	Frank H. Connor
Otto A. Harbach	Max Dreyfus
Ray Henderson	Donald Gray
John Tasker Howard	Jack Mills
A. Walter Kramer	Jack Robbins
Edgar Leslie	Lester Sahtly
George W. Meyer	Herman Starr

Exhibit "B" Annexed to Affidavit of Herman Finkelstein

Our present license agreements with the telecasters provides for a gratuitous license subject to a thirty-day cancellation notice on our part. The progress of commercial television within the past year can only be described in terms of "leaps and bounds" and the telecasters are now desirous of entering into license agreements for a fixed period.

In the interest of good customer and public relations, it has become imperative for us to arrive at a license agreement with them, commensurate with our contribution, as quickly as possible.

You will note that the following resolution explains the terms under which the agreement between the Society and its members is to become effective:

> "RESOLVED, that the Society promptly send to all members a proposed television agreement in the form hereto annexed for execution by such members; and it was
>
> "FURTHER RESOLVED that the President hold in escrow all such agreements signed by members of the Society until the writer-members who have signed and delivered such agreements and the publisher-members who have signed and delivered such agreements represent eighty percent (80%) of the total amount of the Society's distribution of domestic royalties during the calendar year 1947 to writer-members and publisher-members respectively, at which time such agreements shall become in full force and effect as to all members who shall have signed and delivered the same."

Exhibit "B" Annexed to Affidavit of Herman Finkelstein

It is, therefore, extremely urgent that you sign the two enclosed copies and mail both of them back to us in the enclosed stamped envelope, at your earliest convenience.

Thanking you for your kind attention,

Cordially yours,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,

/s/ FRED E. AHLERT,
President.

Enclosures
FEA:SR

Exhibit "C" Annexed to Affidavit of Herman Finkelstein

Network effective date letter.

October 17, 1949.

American Society of Composers,
Authors and Publishers
30 Rockefeller Plaza
New York, N. Y.

Dear Sirs:

Simultaneously with the delivery of this letter, we are delivering to Hon. Robert P. Patterson in accordance with the provisions hereof two fully executed copies of each of the following license agreements:

All of such license agreements (hereinafter referred to as the license agreements) have been executed as of January 1, 1949.

As you do not now have authority to enter into such license agreements, it is hereby agreed between us as follows:

1. Attached hereto as Exhibit "A" is the form of television recording letter hereinafter referred to.

2. The license agreements shall become effective on such date as you shall deliver to us

(a) written notice that you have received such rights as are necessary to permit you to license, under the license

agreements, to the extent therein provided and for the full terms thereof, the performance of musical compositions copyrighted, composed or written by your members, from at least each of the following majorities of the respective member groups indicated:

(i) your publisher-members who in the aggregate received at least 85%, of the amount of your total distribution of domestic royalties during the calendar year 1948 to publisher-members (provided the publisher-members constituting this percentage shall include all of your publisher-members who are on the date hereof represented on your Board of Directors or who are affiliated with a publisher-member represented on said Board, and who have executed your television agreement which you submitted to all members with your letter dated October 8, 1948); and

(ii) your writer-members who in the aggregate received at least 85% of the amount of your total distribution of domestic royalties during the calendar year 1948 to writer-members; and

(iii) your publisher-members and writer-members who in the aggregate received at least 85%, of your aggregate total distribution of domestic royalties during the calendar year 1948, to both publisher-members and writer-members; and

(b) A letter, in the form attached as Exhibit "A", executed by each of your publisher-members who shall have granted you the rights referred to in sub-paragraph (a) of this Paragraph 2.

There shall be attached to the written notice provided for in sub-paragraph (a) of this Paragraph 2 a list of the members from whom you receive such rights, and said list

shall be attached to the license agreements as Schedule "A" thereof, upon the effective date of the license agreements.

3. (a) Within thirty (30) days after the execution of this letter agreement, we shall compute the entire amount which would be payable to you pursuant to the license agreements for the period from January 1, 1949 to September 30, 1949, inclusive, had they been effective during such period, and we shall pay such amount as follows:

(i) 75% of such amount shall be paid directly to you;

(ii) 25% of such amount shall be deposited by us in escrow with Hon. Robert P. Patterson.

(b) During the period commencing October 1, 1949, we shall pay the amounts which would be payable under the licensing agreements if they were effective during such period, as follows:

(i) 75% of such amounts shall be paid directly to you;

(ii) 25% of such amounts shall be deposited by us in escrow with Hon. Robert P. Patterson.

(c) It is agreed that Hon. Robert P. Patterson shall pay to you all amounts and deliver to you and to us one of the executed copies of each license agreement deposited in escrow pursuant to this agreement upon the date on which the license agreements shall become effective or, if this agreement shall be terminated as provided in Paragraph 4 of this agreement, he shall pay to us the amount deposited in escrow upon the effective date of such termination, and

Exhibit "C" Annexed to Affidavit of Hyman Fink

plainly mark all such copies of such license agreement and mail and return one copy of each of such documents to you and to file the other in our respective files.

4. (a) In the event that the conditions specified in paragraph 2 of this agreement shall not have been fulfilled on or before December 31, 1949, either you or we may terminate this agreement at any time thereafter, provided that the party exercising such right of termination shall notify the other thereof in writing and shall specify in such notice the effective date of such termination, which shall not be less than 30 days subsequent to the date on which such notice is received by such other party. In the event that both parties shall exercise such right of termination, the earliest effective date of termination specified in any such notice shall be the effective date of termination of this agreement. The indemnity provisions of the Paramount television licenses, to which reference is made in paragraph 3 of this agreement, and our obligations to make the payments provided for in said paragraph 3 and in subparagraph (a) of this paragraph 4 of this agreement shall not be affected by any termination of this agreement made during the period preceding the effective date of such termination concerned. In the event that the conditions specified in paragraph 2 of this agreement shall be fulfilled during the period subsequent to the giving of such notice and prior to the effective date specified therein, such notice of termination shall be of no force or effect.

(b) In the event that this agreement shall be terminated as provided for herein prior to the fulfillment of the

tions specified in Paragraph 2 of this agreement, the license agreements shall be without effect for any purposes whatsoever and shall be deemed null and void.

5. You hereby agree that the temporary television licenses granted by you to us on December 1, 1948, which were originally for sixty (60) days commencing as of January 1, 1949, and which were extended from time to time to October 14, 1949, are hereby extended to either (i) the date when the license agreements become effective pursuant to Paragraph 2 of this agreement, or (ii) the effective date of termination of this agreement pursuant to Paragraph 4 of this agreement, as the case may be. You further agree that Exhibit "B" attached hereto is hereby made a part of said temporary television licenses and that said temporary television licenses are hereby supplemented effective as of January 1, 1949, by considering to be incorporated therein the provisions of Paragraph 9 of the license agreements referred to on Page 1 hereof, with the understanding that the term referred to therein is the term of such temporary licenses in place of the term specified in such license agreements, and that references to Schedule "A" therein shall be deemed to refer to Exhibit "B" attached hereto.

6. In light of the impracticability of our furnishing further reports to you under Paragraph 3 of such license agreements for the period prior to the date hereof you have agreed that the reports heretofore made by us to you as to the performances made during such period shall be deemed a full compliance with the provisions of such Paragraph 3 with respect thereto.

Exhibit "3" Annexed to Affidavit of Herman Fi

"Our signature at the foot hereof, together wi
signature underneath the words "ACCEPTED AND
To", will constitute this an agreement between us.

Very truly yours,

.....

By .....

ACCEPTED AND AGREED TO:

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

Exhibit "D" Annexed to Affidavit of Herman Finkelstein

Cable Address:
ASCAP, New York

MUrray Hill 8-8800

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK 22, N. Y.

[Emblem]

May 1, 1953
No. 6349

TO ALL MEMBERS:

The present television agreement between the Society and its members expires at the end of this year.

There are enclosed two copies of an extension of that agreement for a period expiring December 31, 1957.

The following resolution explains the terms under which the enclosed extension agreement between the Society and its members is to become effective:

"RESOLVED that the Society promptly send to all members a proposed television agreement in the form hereto annexed for execution by such members, and it was

"FURTHER RESOLVED that the President hold in escrow all such agreements signed by members of the Society until the writer-members who have signed and delivered such agreements and the publisher

members who have signed and delivered such agreements represent eighty percent (80%) of the total amount of the Society's distribution of domestic royalties during the calendar year 1952 to writer members and publisher members respectively, at which time such agreements shall become in full force and effect as to all members who shall have signed and delivered the same."

Our Board of Directors recommends this extension to our membership.

After reading it carefully, please sign both copies and return them to us as soon as possible.

Sincerely yours,

S. STANLEY ADAMS
President

Exhibit "D" Annexed to Affidavit of Herman Finkelstein

American Society of Composers,
Authors and Publishers
575 Madison Avenue
New York 22, N. Y.

Gentlemen:

With respect to the existing Television Performing Rights Agreement entered into between you and the undersigned for a term ending December 31, 1953, you and the undersigned hereby agree to extend the same and all the terms, conditions and provisions thereof for a further period of four (4) years, so that the same shall expire on the 31st day of December, 1957, instead of on the 31st day of December, 1953.

Your signature and seal at the foot hereof, underneath the word "ACCEPTED", together with the signature of the undersigned at the foot hereof, will make this a valid, binding and enforceable agreement between us.

Sincerely yours,

..... (L.S.)

ACCEPTED:

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

(Seal)

Exhibit "D" Annexed to Affidavit of Herman Finkelstein

American Society of Composers,
Authors and Publishers
575 Madison Avenue
New York 22, N. Y.

Gentlemen:

With respect to the existing Television Performing Rights Agreement entered into between you and the undersigned for a term ending December 31, 1953, you and the undersigned hereby agree to extend the same and all the terms, conditions and provisions thereof for a further period of four (4) years, so that the same shall expire on the 31st day of December, 1957, instead of on the 31st day of December, 1953.

Your signature and seal at the foot hereof, underneath the word "ACCEPTED", together with the signature of the undersigned at the foot hereof, will make this a valid, binding and enforceable agreement between us.

Sincerely yours,

..... (L.S.)

ACCEPTED:

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

(Seal)

Exhibit "E" Annexed to Affidavit of Herman Finkelstein

Cable Address:
ASCAP, New York

MUrray Hill 8-8800

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK 22, N. Y.

[Emblem]

Nov. 1, 1956
No. 6882

TO ALL MEMBERS:

The present television agreement between the Society and its members expires on December 31, 1957.

There are enclosed two copies of an extension of that agreement for a period expiring December 31, 1961.

The following resolution explains the terms under which the enclosed extension agreement between the Society and its members is to become effective:

"RESOLVED that the Society promptly send to all members a proposed television agreement in the form hereto annexed for execution by such members; and it was

"FURTHER RESOLVED that the President hold in escrow all such agreements signed by members of the Society until the writer-members who have signed and

delivered such agreements and the publisher-members who have signed and delivered such agreements represent eighty percent (80%) of the total amount of the Society's distribution of domestic royalties during the calendar year 1955 to writer-members and publisher-members respectively, at which time such agreements shall become in full force and effect as to all members who shall have signed and delivered the same."

Our Board of Directors recommends this extension to our membership.

After reading it carefully, please sign both copies and return them to us as soon as possible in the enclosed envelope.

Sincerely yours,

/s/ PAUL CUNNINGHAM
President

PC:fj

Exhibit "F" Annexed to Affidavit of Herman Finkelstein

Cable Address:
ASCAP, New York

MUrray Hill 8-8800

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK 22, N. Y.

STANLEY ADAMS
President

August 4, 1961
No. 7756

TO ALL MEMBERS:

The present television agreement between the Society and its members expires on December 31, 1961.

There are enclosed two copies of an extension of that agreement for a period expiring December 31, 1966.

The following resolution explains the terms under which the enclosed extension agreement between the Society and its members is to become effective:

"RESOLVED that the Society send to all members a proposed television agreement in the form hereto annexed for execution by such members; and it was

"FURTHER RESOLVED that the President hold in escrow all such agreements signed by members of the Society until the writer-members who have signed and delivered such agreements and the publisher-

members who have signed and delivered such agreements represent eighty percent (80%) of the total amount of the Society's distribution of domestic royalties during the preceding calendar year to writer-members and publisher-members respectively, at which time such agreements shall become in full force and effect as to all members who shall have signed and delivered the same."

Our Board of Directors recommends this extension to our membership.

After reading it carefully, please sign both copies and return them to us as soon as possible in the enclosed envelope.

Sincerely yours,

/s/ STANLEY ADAMS
President

SA:fj
encs.